EXHIBIT 13

Ludmer, Christopher

From: Joseph Maiorano [jgmesq@yahoo.com]
Sent: Friday, August 10, 2007 12:19 PM
To: Lisa Allen; Ludmer, Christopher
Subject: Abnos
Follow Up Flag: Follow up
Flag Status: Red

Lisa:

Due to my trial schedule over the next few weeks, I need to continue all dates on the Abnos matter for at least 30 days. Please contact Chris Ludmer and let me know what the new dates are.

Thanks,

Joe

J.G. Maiorano, Esq.
402 West Broadway, 27th Floor
San Diego, Ca. 92101
tel: 619-230-1612 fax: 619-230-1839 cell: 619-846-6700

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EXHIBIT 14

COPY

ADR-106

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*
Christopher L. Ludmer, Esq. (SBN 208411)
SELTZER CAPLAN McMAHON VITEK
750 "B" Street, Suite 2100
San Diego, CA 92101

TELEPHONE NO.: (619) 685-3122 FAX NO. *(Optional):* (619) 702-6895
E-MAIL ADDRESS *(Optional):*
ATTORNEY FOR *(Name):* Setlzer Caplan McMahon Vitek, a Law Corporation

FOR COURT USE ONLY

FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION
2008 JAN -8 P 1:59
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: CENTRAL DIVISION

PETITIONER: SELTZER CAPLAN McMAHON VITEK, a Law Corporation
RESPONDENT: DAMON ABNOS, an individual

PETITION TO [X] CONFIRM [ ] CORRECT [ ] VACATE
CONTRACTUAL ARBITRATION AWARD

Jurisdiction *(check all that apply):*
[ ] Action is a limited civil case
Amount demanded [ ] does not exceed $10,000
[ ] exceeds $10,000, but does not exceed $25,000
[X] Action is an unlimited civil case (exceeds $25,000)

CASE NUMBER:
GIC864098

NOTICE: You may use this form to request that the court confirm, correct, or vacate an award in an arbitration conducted pursuant to an agreement between the parties that is subject to Code of Civil Procedure section 1285 et seq. and that does not involve an attorney-client fee dispute. If you are requesting court action after an attorney-client fee arbitration award, please read Alternative Dispute Resolution form ADR-105, *Information Regarding Rights After Attorney-Client Fee Arbitration.*

1. **Petitioner and respondent.** Petitioner *(name each):* SELTZER CAPLAN McMAHON VITEK, a Law Corporation

   alleges and requests relief against respondent *(name each):* DAMON ABNOS, an individual

2. **Contractual arbitration.** This petition requests the court to confirm, correct, or vacate an award in an arbitration conducted according to an agreement between the parties that is subject to Code of Civil Procedure section 1285 et seq.

3. **Pending or new action.**
   a. [X] A court case is already pending, and this is a petition filed in that action. *(If so, proceed to item 4.)*
   b. [ ] This petition commences a new action. *(If so, complete items 3b(1) through 3b(4).)*
      (1) **Petitioner's capacity.** Each petitioner named in item 1 is an individual,
         [ ] except petitioner *(state name and complete one or more of the following):*
         (a) [ ] is a corporation qualified to do business in California.
         (b) [ ] is an unincorporated entity *(specify):*
         (c) [ ] is a representative *(specify):*
         (d) [ ] is *(specify other capacity):*

      (2) **Respondent's capacity.** Each respondent named in item 1 is an individual,
         [ ] except respondent *(state name and complete one or more of the following):*
         (a) [ ] is a business organization, form unknown.
         (b) [ ] is a corporation.
         (c) [ ] is an unincorporated entity *(specify):*
         (d) [ ] is a representative *(specify):*
         (e) [ ] is *(specify other capacity):*

PETITIONER: SELTZER CAPLAN McMAHON VITEK, a Law Corporation RESPONDENT: DAMON ABNOS, an individual	CASE NUMBER: GIC864098

3. b. (3) **Amount or property in dispute.** This petition involves a dispute over *(check and complete all that apply):*
   - (a) ☐ the following amount of money *(specify amount)*: $
   - (b) ☐ property *(if the dispute involves property, complete both of the following):*
     - (i) consisting of *(identify property in dispute):*
     - (ii) having a value of *(specify value of property in dispute):* $

   (4) ☐ **Venue.** This court is the proper court because *(check (a) or (b)):*
   - (a) ☐ this is the court in the county in which the arbitration was held.
   - (b) ☐ the arbitration was not held exclusively in any county of California, or was held outside of California, and *(check one or more of the following):*
     - (i) ☐ this is the court in the county where the agreement was made.
     - (ii) ☐ this is the court in the county where the agreement is to be performed.
     - (iii) ☐ the agreement does not specify a county where it is to be performed and was not made in any county in California, and the following party resides or has a place of business in this county *(name of party):*
     - (iv) ☐ the agreement does not specify a county where it is to be performed and was not made in any county in California, and no party to this action resides or has a place of business in California.

4. **Agreement to arbitrate.**
   a. **Date.** Petitioner and respondent entered into a written agreement on or about *(date):* 11/23/2003 and 11/16/2006
   b. ☒ **Attachment.** A copy of the agreement is submitted as Attachment 4(b) and incorporated herein by this reference.
   c. **Arbitration provision.** Paragraph A of the agreement provides for arbitration of disputes arising out of the agreement as follows *(either copy the arbitration provision in full or summarize the provision):* See "Attachment A" of Engagement Letter and Stipulation by the parties, both attached hereto as Attachment 4(b).

5. **Dispute subject to arbitration.** A dispute arose between petitioner and respondent concerning the following matter covered by the agreement to arbitrate *(summarize the dispute):* Mr. Abnos alleged legal malpractice in his representation in a family law matter. Seltzer Caplan McMahon Vitek alledged that Mr. Abnos breached a contract for failing to pay legal fees incurred on his behalf.

6. **Arbitrator.** The following person was duly selected or appointed as arbitrator *(name of each arbitrator):*
   Hon. Anita Rae Shapiro (Ret.)

7. **Arbitration hearing.** The arbitration hearing was conducted as follows *(complete both of the following):*
   a. **Date** *(each date of arbitration):* September 17, 2007 and December 2, 2007
   b. **Location** *(city and state where arbitration was conducted):* San Diego, California

8. **Arbitration award.**
   a. **Date of award.** The arbitration award was made on *(date):* December 26, 2007
   b. **Terms of award.** The arbitration award *(check one or more of the following):*
   - (1) ☒ requires ☐ petitioner ☒ respondent to pay the other party this amount: $ 100,348.58
   - (2) ☐ requires neither party to pay the other anything.
   - (3) ☐ is different as to different petitioners and respondents.
   - (4) ☐ provides *(specify other terms or check item 8(c) and attach a copy of the award):*

   c. ☒ **Attachment of Award.** A copy of the award is submitted as Attachment 8(c).

9. **Service of award.**
   a. The signed award or an accompanying document indicates that the award was served on petitioner on *(date):* 12/27/2007
   b. ☐ Petitioner alleges that a signed copy of the award was actually served on *(date):*

PETITIONER: SELTZER CAPLAN McMAHON VITEK, a Law Corporation RESPONDENT: DAMON ABNOS, an individual	CASE NUMBER: GIC864098

10. **Petitioner requests that the court** *(check all that apply):*
   a. [X] **Confirm the award, and enter judgment according to it.**
   b. [ ] **Correct the award and enter judgment according to the corrected award, as follows:**
      (1) The award should be corrected because *(check all that apply):*
         (a) [ ] the amount of the award was not calculated correctly, or a person, thing, or property was not described correctly.
         (b) [ ] the arbitrator exceeded his or her authority.
         (c) [ ] the award is imperfect as a matter of form.
      (2) The facts supporting the grounds for correcting the award alleged in item 10b(1) are as follows *(if additional space is required, check here [ ] and submit facts on an attachment labeled 10b(2)):*
      (3) The award should be corrected as follows *(if additional space is required, check here [ ] and describe requested correction on an attachment labeled 10b(3)):*
   c. [ ] **Vacate (cancel) the award.**
      (1) The award should be vacated because *(check all that apply):*
         (a) [ ] the award was obtained by corruption, fraud, or other unfair means.
         (b) [ ] an arbitrator was corrupt.
         (c) [ ] the misconduct of a neutral arbitrator substantially prejudiced petitioner's rights.
         (d) [ ] the arbitrator exceeded his or her authority, and the award cannot be fairly corrected.
         (e) [ ] the arbitrator unfairly refused to postpone the hearing or to hear evidence useful to settle the dispute.
         (f) [ ] an arbitrator failed to disclose within the time for disclosure a ground for disqualification of which the arbitrator was then aware.
         (g) [ ] an arbitrator should have disqualified himself or herself after petitioner made a demand to do so.
      (2) The facts supporting the grounds for vacating the award alleged in item 10c(1) are as follows *(if additional space is required, check here [ ] and submit facts on an attachment labeled 10c(2)):*
      (3) Petitioner [ ] does [ ] does not request a new arbitration hearing.
   d. [X] **Award petitioner interest** from *(date):* January 1, 2008
      (1) [ ] at the statutory rate.
      (2) [X] at rate of 10 % per year. compounded annually, according to the arbitration award.
   e. [ ] **Award petitioner costs of suit:**
      (1) [ ] in the amount of: $
      (2) [ ] according to proof.
   f. [ ] **Award petitioner attorney fees incurred in this action** *(check only if attorney fees are recoverable in this action according to statute or the parties' agreement):*
      (1) [ ] in the amount of: $
      (2) [ ] according to proof.
   g. [ ] **Award petitioner the following other relief** *(describe relief requested; if additional space is required, check here [ ] and describe relief on an attachment labeled 10g):*

11. **Pages and attachments.** Number of pages attached: 21

Date: January 8, 2007

Christopher L. Ludmer, Esq.
(TYPE OR PRINT NAME)

[signature]
(SIGNATURE OF PETITIONER OR ATTORNEY)

EXHIBIT 15

U.S. District Court
Southern District of California (San Diego)
CIVIL DOCKET FOR CASE #: 3:08-cv-00058-DMS-WMC

Abnos v. Hejmanowski et al
Assigned to: Judge Dana M. Sabraw
Referred to: Magistrate Judge William McCurine, Jr
Related Case: 3:08-cv-00201-WQH-WMC
Cause: 28:1332 Diversity-Other Contract

Date Filed: 01/10/2008
Jury Demand: None
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Damon Abnos
an individual

represented by **Joseph G Maiorano**
Law Offices of Joseph G Maiorano
402 West Broadway
Suite 2700
San Diego, CA 92101
(619)230-1612
Fax: (619)230-1839
Email: jgmesq@yahoo.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Lee Hejmanowski
an individual

Defendant

Seltzer Caplan McMahon Vitek

Defendant

DOES 1 to 10

Date Filed	#	Docket Text
01/10/2008	1	PETITION to vacate arbitration (Filing fee $ 350 receipt number 146300.), filed by Damon Abnos.(knh)(bar). (Entered: 01/14/2008)

PACER Service Center			
Transaction Receipt			
02/19/2008 08:33:44			
PACER Login:	us3906	**Client Code:**	

EXHIBIT 16

FILED
CIVIL BUSINESS OFFICE 7
CENTRAL DIVISION
2006 JUL 20 P 2: 04
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

Christopher L. Ludmer, Esq. (SBN 208411)
SELTZER CAPLAN McMAHON VITEK
A Law Corporation
750 B Street, 2100 Symphony Towers
San Diego, California 92101-8177
Telephone: (619) 685-3003
Facsimile: (619) 685-3100

Attorneys for Defendants LEE HEJMANOWSKI and
SELTZER CAPLAN McMAHON VITEK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

(CENTRAL DIVISION)

DAMON ABNOS, an individual,

Plaintiff,

vs.

LEE HEJMANOWSKI, and individual; SELTZER CAPLAN McMAHON VITEK, a Law Corporation; and DOES 1 to 10,

Defendants.

CASE NO. GIC 864098

ANSWER TO COMPLAINT

Dept.: 64
Judge: Hon. William R. Nevitt, Jr.
Complaint Filed: April 10, 2006
Trial Date: Not Set

Defendants LEE HEJMANOWSKI ("Hejmanowski") and SELTZER CAPLAN McMAHON VITEK ("SCMV") (hereinafter collectively referred to as "Defendants"), in answer to the unverified complaint ("complaint") of Plaintiff DAMON ABNOS ("Plaintiff") on file herein, deny and allege as follows:

GENERAL DENIAL

Pursuant to the provisions of Section 431.30 of the California Code of Civil Procedure, these answering Defendants deny generally and specifically each and every allegation contained in the complaint and in each cause of action set down therein and deny that Plaintiff sustained damages in the sum or sums alleged, or in any other sum or sums whatsoever or at all.

Further answering Plaintiff's complaint, and the whole thereof, including each and every purported cause of action contained therein, these answering Defendants deny that Plaintiff has sustained any injury, damage or loss, if any, by reason of any act or omission on the part of these answering Defendants.

AFFIRMATIVE DEFENSES

In setting forth the following affirmative defenses, Defendants neither expressly nor impliedly assume the burden of disproving any element of any claim for which Plaintiff bears the burden of proof or the burden of production as a matter of law. Defendants allege the following affirmative defenses upon information and belief:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. As a first and separate affirmative defense to the complaint on file herein, and to each cause of action alleged therein, these answering Defendants allege that Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendants.

SECOND AFFIRMATIVE DEFENSE

(Breach of Contract)

2. As a second and separate affirmative defense to the complaint on file herein, and to each cause of action alleged therein, these answering Defendants allege that Plaintiff failed to perform all duties and obligations on its part by its agreements, oral and written, with these answering Defendants, and such acts or omissions bar Plaintiff's recovery.

THIRD AFFIRMATIVE DEFENSE

(Breach of the Duty of Good Faith and Fair Dealing)

3. As a third and separate affirmative defense to the complaint on file herein, and to each cause of action alleged therein, these answering Defendants allege that Plaintiff has breached its duty of good faith and fair dealing, and such actions or omissions bar Plaintiff's recovery.

FOURTH AFFIRMATIVE DEFENSE

(Waiver)

4. As a fourth and separate affirmative defense to the complaint on file herein, and to each cause of action alleged therein, these answering Defendants allege that Plaintiff's action should be barred or diminished under the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

5. As a fifth and separate affirmative defense to the complaint on file herein, and to each cause of action alleged therein, these answering Defendants allege that Plaintiff's action should be barred or diminished under the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

6. As a sixth and separate affirmative defense to the complaint on file herein, and to each cause of action alleged therein, these answering Defendants allege that Plaintiff's action should be barred or diminished under the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

(Contractual Arbitration)

7. As a seventh and separate affirmative defense to the complaint on file herein, and to each cause of action alleged therein, these answering Defendants allege that Plaintiff's action should be barred or diminished because Plaintiff is contractually bound to arbitrate this dispute.

EIGHTH AFFIRMATIVE DEFENSE

(Offset)

8. As an eighth and separate affirmative defense to the complaint on file herein, and to each cause of action alleged therein, these answering Defendants allege that that they have suffered damage by reason of Plaintiff's conduct; that they have the right of offset if any amount of money is owed to Plaintiff or due Plaintiff by way of damage.

NINTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

9. As a ninth and separate affirmative defense to the complaint on file herein, and to each cause of action alleged therein, these answering Defendants allege that Plaintiff's action is barred under the applicable statute of limitations, including, but not limited to, Sections 335.1, 336, 336a, 337, 337.1, 337.15, 337.2, 337a, 338, 339, 339.5, 340, 340.1, 340.15, 340.2, 340.3, 340.5, 340.6, 340.7, 340.8, 340.9, 340.10, 341, 341.5, 341a, 342, 343, 346 and 347.

TENTH AFFIRMATIVE DEFENSE

(Reservation of Other Affirmative Defenses)

10. As an eighth and separate affirmative defense to the complaint on file herein, and to each cause of action alleged therein, these answering Defendants do not have sufficient knowledge or information upon which to form a belief as to whether they may have additional affirmative defenses available. Defendants reserve the right to assert additional affirmative defenses in the event discovery or further analysis indicate that additional unknown or unstated affirmative defenses would be applicable.

WHEREFORE, Defendants pray for judgment:

1. That Plaintiff take nothing by his complaint;
2. For all attorneys' fees incurred herein;
3. That Defendants be awarded costs of suit; and
4. For such other and further relief as the Court may deem just and proper.

Dated: July 20, 2006

SELTZER CAPLAN McMAHON VITEK
A Law Corporation

By: [signature]
Christopher L. Ludmer
Attorneys for Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK

EXHIBIT 17

982.1(20)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:
Christopher L. Ludmer, Esq. (SBN 208411)
SELTZER CAPLAN McMAHON VITEK
750 B Street, Suite 2100
San Diego, CA 92101
TELEPHONE NO: (619) 685-3003 FAX NO *(Optional)*: (619) 685-3100
E-MAIL ADDRESS *(Optional)* ludmer@scmv.com
ATTORNEY FOR *(Name)*. SELTZER CAPLAN McMAHON VITEK

FOR COURT USE ONLY

CIVIL BUSINESS OFFICE 7
CENTRAL DIVISION

2006 JUL 20 P 2: 04

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 330 W. Broadway
MAILING ADDRESS:
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME:

PLAINTIFF: SELTZER CAPLAN McMAHON VITEK

DEFENDANT: DAMON ABNOS

☐ DOES 1 TO ____________

CONTRACT

☐ COMPLAINT ☐ AMENDED COMPLAINT *(Number)*:

☑ CROSS-COMPLAINT ☐ AMENDED CROSS-COMPLAINT *(Number)*:

Jurisdiction *(check all that apply)*:
ACTION IS A LIMITED CIVIL CASE
Amount demanded ☐ does not exceed $10,000
☐ exceeds $10,000 but does not exceed $25,000
☑ ACTION IS AN UNLIMITED CIVIL CASE (exceeds $25,000)
☐ ACTION IS RECLASSIFIED by this amended complaint or cross-complaint
☐ from limited to unlimited
☐ from unlimited to limited

CASE NUMBER:
GIC 864098

1. **Plaintiff*** *(name or names)* SELTZER CAPLAN McMAHON VITEK

alleges causes of action against **defendant*** *(name or names)*: DAMON ABNOS

2. This pleading, including attachments and exhibits, consists of the following number of pages: 4

3. a. Each plaintiff named above is a competent adult
☑ **except** plaintiff *(name)*: SELTZER CAPLAN McMAHON VITEK
(1) ☑ a corporation qualified to do business in California
(2) ☐ an unincorporated entity *(describe)*:
(3) ☐ other *(specify)*:

b. ☑ Plaintiff *(name)* SELTZER CAPLAN McMAHON VITEK
a. ☐ has complied with the fictitious business name laws and is doing business under the fictitious name *(specify)*:

b. ☑ has complied with all licensing requirements as a licensed *(specify)*. Law Corporation

c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c

4. a. Each defendant named above is a natural person

☐ **except** defendant *(name)*:
(1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity *(describe)*:

(4) ☐ a public entity *(describe)*:

(5) ☐ other *(specify)*:

☐ **except** defendant *(name)*:
(1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity *(describe)*:

(4) ☐ a public entity *(describe)*:

(5) ☐ other *(specify)*:

* If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

Form Approved for Optional Use
Judicial Council of California
982 1(20) [Rev January 1, 2006]

COMPLAINT—Contract

Code of Civil Procedure, § 425.12

American LegalNet, Inc.
www.USCourtForms.com

982.1(20)

SHORT TITLE: SELTZER CAPLAN McMAHON VITEK v. ABNOS	CASE NUMBER: GIC 864098

4 *(Continued)*

b The true names of defendants sued as Does are unknown to plaintiff.

(1) ☐ Doe defendants *(specify Doe numbers)*: ____________ were the agents or employees of the named defendants and acted within the scope of that agency or employment

(2) ☐ Doe defendants *(specify Doe numbers)*: ____________ are persons whose capacities are unknown to plaintiff

c ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c

d ☐ Defendants who are joined under Code of Civil Procedure section 382 are *(names)*:

5 ☑ Plaintiff is required to comply with a claims statute, **and**

a ☐ has complied with applicable claims statutes, *or*

b ☑ is excused from complying because *(specify)*:
Defendant has waived his rights to notice of non-binding arbitration by filing a complaint for legal malpractice against Plaintiff

6 ☐ This action is subject to ☐ Civil Code section 1812 10 ☐ Civil Code section 2984 4.

7 This court is the proper court because

a ☑ a defendant entered into the contract here

b ☑ a defendant lived here when the contract was entered into

c ☐ a defendant lives here now.

d ☑ the contract was to be performed here.

e ☐ a defendant is a corporation or unincorporated association and its principal place of business is here.

f ☐ real property that is the subject of this action is located here

9 ☑ other *(specify)*: Defendant filed his complaint in this Court

8 The following causes of action are attached and the statements above apply to each *(each complaint must have one or more causes of action attached)*:

☑ Breach of Contract

☑ Common Counts

☐ Other *(specify)*:

9 ☐ Other allegations:

10 **Plaintiff prays** for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

a ☑ damages of: $ 75,400.00

b ☑ interest on the damages

(1) ☑ according to proof

(2) ☐ at the rate of *(specify)*. percent per year from *(date)*:

c ☑ attorney's fees

(1) ☐ of: $

(2) ☑ according to proof

d ☐ other *(specify)*:

11. ☐ The paragraphs of this pleading alleged on information and belief are as follows *(specify paragraph numbers)*:

Date: July 20, 2006

Christopher L. Ludmer, Esq. ▶ [signature]

(TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

SHORT TITLE: SELTZER CAPLAN McMAHON VITEK v. ABNOS	CASE NUMBER: GIC 864098

FIRST (number) **CAUSE OF ACTION—Breach of Contract** Page 3

ATTACHMENT TO ☐ Complaint ☑ Cross-Complaint

(Use a separate cause of action form for each cause of action)

BC-1 Plaintiff *(name)*: SELTZER CAPLAN McMAHON VITEK

alleges that on or about *(date)*: November 2003
a ☑ written ☐ oral ☐ other *(specify)*:
agreement was made between *(name parties to agreement)*:
SELTZER CAPLAN McMAHON VITEK and DAMON ABNOS
☑ A copy of the agreement is attached as Exhibit A, **or**
☐ The essential terms of the agreement ☐ are stated in Attachment BC-1 ☐ are as follows *(specify)*:

BC-2 On or about *(dates)*: October 2004
defendant breached the agreement by ☐ the acts specified in Attachment BC-2 ☑ the following acts *(specify)*:
Failing to pay the amount owed to Plaintiff for professional services rendered.

BC-3 Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing

BC-4 Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement
☐ as stated in Attachment BC-4 ☑ as follows *(specify)*:
$75,400.00 in unpaid fees for services rendered, plus accrued interest

BC-5 ☐ Plaintiff is entitled to attorney fees by an agreement or a statute
☐ of $
☐ according to proof

BC-6 ☐ Other:

SHORT TITLE: SELTZER CAPLAN McMAHON VITEK v. ABNOS	CASE NUMBER: GIC 864098

SECOND (number) **CAUSE OF ACTION—Common Counts** Page 4

ATTACHMENT TO ☐ Complaint ☑ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

CC-1 Plaintiff *(name)*: SELTZER CAPLAN McMAHON VITEK

alleges that defendant *(name)*: DAMON ABNOS

became indebted to ☑ plaintiff ☐ other *(name)*:

a ☐ within the last four years
- (1) ☐ on an open book account for money due.
- (2) ☐ because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff

b. ☑ within the last ☐ two years ☑ four years
- (1) ☐ for money had and received by defendant for the use and benefit of plaintiff.
- (2) ☑ for work, labor, services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff
  - ☐ the sum of $
  - ☑ the reasonable value.
- (3) ☐ for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff
  - ☐ the sum of $
  - ☐ the reasonable value
- (4) ☐ for money lent by plaintiff to defendant at defendant's request.
- (5) ☐ for money paid, laid out, and expended to or for defendant at defendant's special instance and request
- (6) ☐ *other (specify)*:

CC-2. $ 75,400.00 , which is the reasonable value, is due and unpaid despite plaintiff's demand, plus prejudgment interest ☑ according to proof ☐ at the rate of ______ percent per year from *(date)*: October 2004

CC-3. ☐ Plaintiff is entitled to attorney fees by an agreement or a statute
- ☐ of $
- ☐ according to proof

CC 4 ☐ Other:

EXHIBIT A

NORMAN T. SELTZER
ROBERT CAPLAN
GERALD L. McMAHON
REGINALD A. VITEK
STEPHEN DOUGLAS ROTER
DAVID J. DORNE
JAMES F. DAWE
BRIAN T. SELTZER
ELIZABETH A. SMITH
JOYCE A. McCOY
DEAN E. J. WICKHAM
JOHN H. ALSPAUGH
JAMES P. DELPHEY
ELINOR I. MERIDETH
MICHAEL G. NAUDI
THOMAS F. STEINKE
NEAL P. PANISH
SEAN T. MARGAUEN
DAVID S. HINTON
DAVID J. ZUBKOFF
CHARLES L. GOLDBERG
PATRICK O. HALL
MICHAEL A. LEONE
DANIEL A. ANDRIST
J. SCOTT SCHEPER
LEE E. HEJMANOWSKI
DANIEL E. EATON
MONTY A. McINTYRE
M. CHRISTINE TENNISON
ANDREW D. BROOKS
PAUL R. DATHOW
JOHN M. TOSCANO*
MARNIE S. SKEEN
DAVID M. GREELEY
TRACY A. KINGSHAVEN
CHARLES B. WITMAN
RHONDA K. CRANDALL
JACK R. LEER
JEFFREY B. HARRIS
SCOTT A. MILLER
KEVIN J. REIDCH
ROBERT (ROBIN) N. TRAYLOR
MATTHEW M. MAHONEY
JOSEPH D. AABRIR
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KYLE A. HOOK
ANGELA A. BASSETT
ANDREAS A. BORGEAS
CHRISTINE M. LA PINTA

OF COUNSEL
VICTOR A. VILAPLANA
LINDA PAPST de LEON
G. KIRK ELLIS
GREGORY A. VEGA
HOWARD J. BARNHORST II
JOHN E. BARRY
RICHARD A. CLEGG
G. SCOTT WILLIAMS

*ADMITTED IN NEW JERSEY ONLY

www.scmv.com
619.685.3003
619.685.3100 FAX

2100 SYMPHONY TOWERS
750 B STREET
SAN DIEGO, CALIFORNIA 92101

SELTZER | CAPLAN | McMAHON | VITEK
A LAW CORPORATION

LEE E. HEJMANOWSKI, ESQ.
hejmanowski@scmv.com
619 685.3043
619 702.6841 FAX

November 19, 2003

Mr. Damon Abnos
1306 Nautilus Street
La Jolla, CA 92037

RE: AGREEMENT RE LEGAL SERVICES AND FEES
Our File No. 08900.57529

Dear Mr. Abnos:

1. **Engagement**

The purpose of this agreement is to confirm the terms under which this firm will represent you in connection with marital dissolution proceedings between you and your spouse, Lori Abnos. As we discussed, if the child custody and visitation issues must be resolved in court, you may be required to retain additional attorneys to work with us on those issues, depending upon the other commitments of the attorneys in this firm who practice in those areas. We will revisit that subject with you later, if necessary.

2. **Attorneys' Services, Fees and Costs**

It is difficult to predict accurately the extent of legal services which this matter will require. We have therefore not made any prediction or commitment as to the total fee or the outcome of the matter. You have agreed to pay the usual fees charged from time to time by Lee E. Hejmanowski, Esq., and the persons in our firm who work on this matter under his supervision.

We will render monthly statements to you indicating the status of your account on a time-spent basis, calculated at the hourly rates of persons working on the matter which are in effect when the statements are rendered. Current hourly rates in the Family Law Department are:

Gerald L. McMahon	$485.00
Lee E. Hejmanowski	$310.00
Richard A. Clegg	$240.00
Linda Papst de Leon	$240.00
Amanda L. Kramer	$240.00
Angela A. Bassett	$175.00

Hourly rates for others, which vary according generally to levels of experience, are as follows: Senior members of the firm, $300 to $485; Associate and Of Counsel Attorneys, $150 to $425; Paralegals, $95 to $130; Law Clerks, $150 to $210; Word Processing, $40 to $55; and, Document Control Clerks, $25 to $40. Our hourly charges include time spent on the telephone, intake interviews and processing, performing legal research, conferring with persons who may have relevant information, negotiating for settlement and performing all other services on your behalf. If our firm adopts new usual hourly rates from time to time during the course of our representation, later services will be billed and payable at such rates. No new rates will be adopted before January 1, 2004.

Independent of and in addition to the fees for legal services to be rendered on your behalf, it may be necessary for this firm to incur costs and advance sums for items such as filing fees, process service fees, deposition transcripts, photocopying (at 20 cents per page if done in-house), expert witness fees, investigator's fees, long-distance telephone charges, telefax transmission and receipt charges (at $1 per page), travel expenses and other charges. We may request that such costs be advanced by you; however, to the extent that our firm advances such costs on your behalf, it is understood that you will reimburse us monthly and hold us harmless from liability for these costs. Certain vendors may be billing you directly for services performed at our request. We will identify all such vendors to you in advance.

3. **Billing Statements and Retainer(s)**

We will send you detailed monthly statements indicating the current status of your account, both for services rendered and for costs advanced. The statements will show the date of each service performed, who performed it, the time expended and rate charged. The statements will be due and payable in full monthly, upon receipt. A late charge of 10% per annum will be assessed on the portion of your account owing for both services performed and costs advanced remaining unpaid for more than 45 days after the date of any statement.

We require that you deposit with us an initial sum of $10,000 as a retainer to be deposited in our clients' trust account. (In fact, you have already presented us with a check in that amount.) All such funds not used will be returned to you after a reasonable time has passed to make sure all billings are paid. At a minimum, this would be at least one complete billing cycle after completion of the matter. By your execution and return to us of the enclosed copy of this letter, you will be authorizing and instructing us to deposit your retainer check in our clients' trust account and to disburse proceeds of such check incrementally to our firm to apply to fees and/or costs which our firm may advance or incur. Disbursements will be made automatically to pay amounts that will be shown on our monthly statements. Any time the amount deposited to your credit in our clients' trust account falls below $2,000 (or such other sum as we may designate from time to time), you must deposit at least another $10,000 (or such other sum as we may designate from time to time) in the trust account so that the account will always have a credit balance in your favor from which we can make disbursements. Any unused portion of the additional deposit(s) will also be refunded to you as set forth above. If you choose not to deposit the additional retainer funds, we have the right to terminate this engagement and withdraw as your counsel of record. In addition to that right, if the amount deposited to your credit in our clients' trust account reaches a zero balance, we will be entitled to discontinue work on this matter and withdraw as your counsel. If we continue working on your matter(s), you will remain responsible for paying for our services and costs advanced and/or incurred.

To the extent you are indebted to this firm for fees and/or costs incurred, this firm shall have a lien on all monies and property which are awarded to you by the court, or obtained by negotiation.

Provisions of this agreement may be disclosed to the court in connection with any application for payment of fees and costs. We may also advise the court of any amounts we have received on account from you.

To minimize attorneys' fees and costs, we will try to effect a reasonable settlement agreement, which will avoid a trial. If settlement efforts are not successful and trial is required, the fees and costs will necessarily be increased, and a separate fee agreement and retainer may be required.

We reserve the right to withdraw from the matter if you do not make the payments required by this agreement, if you have misrepresented or failed to disclose material facts to us, or if you choose not to follow our advice. You also retain the right to terminate this firm as your attorneys of record at any time and for any reason, in which case we ask to be so advised in writing. In either event, you would be responsible for the fees and costs to date of withdrawal or termination.

4. Arbitration Provision

Concurrently with this Agreement, you agree to and enter into the Arbitration Agreement attached as Exhibit "A", by which you and this firm agree that any controversy, claim or dispute which arises from or relates to this agreement or services rendered or to be rendered by this firm (including its attorneys and employees) shall be determined exclusively by submission to mandatory, binding arbitration, instead of by a lawsuit or resort to court action.

5. Other Provisions

A dissolution of marriage proceeding is one of those events that should induce a review of one's estate plan. We have attorneys in our firm who specialize in the field of estate planning. If you wish, we can set an appointment for you to discuss the topic.

Once our file has been closed, we will not perform any services on your behalf concerning this matter. Thereafter, unless otherwise requested and agreed in writing, we will not notify you of changes in the law which may affect you or your interests with respect to this matter.

No change, waiver or modification of any of the provisions of this agreement shall be effective unless in writing and signed by our firm. This letter contains our entire agreement concerning the services we will be performing and our compensation for such services and costs. We have made no representations or promises other than those expressly set forth in this agreement.

Should you ask us to render additional legal services of the same general kind as requested by you in this matter, and should we agree to undertake them, and if no new written fee agreement is entered into, the terms and conditions of this agreement shall control our engagement for any such additional services.

Additionally, we wish to advise you that it is the policy of our firm to destroy papers in files any time after ten years from the conclusion of a matter. If for any reason you wish to preserve any of the records or files from this matter, please request them from our office well before this time period elapses.

To confirm our agreement under the terms and conditions set forth above, please sign and return the enclosed copy of this letter to us on or before November 25, 2003.

We look forward to working with you.

Very truly yours,

SELTZER CAPLAN McMAHON VITEK
A Law Corporation

By [signature]
Lee E. Hejmanowski
Vice-President

Encls.

APPROVED AND ACCEPTED: **CLIENT:**

Retainer: $10,000 (already delivered)

Dated: 11-27-03 [signature]
DAMON ABNOS

EXHIBIT "A"

ARBITRATION AGREEMENT

THE UNDERSIGNED AGREE THAT ANY AND ALL CONTROVERSIES, CLAIMS OR DISPUTES (COLLECTIVELY "DISPUTES") WHICH ARISE FROM OR RELATE TO THE ENGAGEMENT OF, OR SERVICES RENDERED OR TO BE RENDERED BY, SELTZER CAPLAN McMAHON VITEK (INCLUDING ITS ATTORNEYS AND EMPLOYEES) (COLLECTIVELY "THE LAW FIRM") SHALL BE DETERMINED EXCLUSIVELY BY SUBMISSION TO MANDATORY, BINDING ARBITRATION, INSTEAD OF BY A LAWSUIT OR RESORT TO COURT ACTION. SUCH DISPUTES SHALL INCLUDE, WITHOUT LIMITATION, DISPUTES AS TO FEES, COSTS OR PROFESSIONAL MALPRACTICE (THAT IS, AS TO WHETHER ANY LEGAL SERVICES RENDERED WERE UNNECESSARY OR UNAUTHORIZED OR WERE IMPROPERLY, NEGLIGENTLY OR INCOMPETENTLY RENDERED).

BY ENTERING INTO THIS AGREEMENT THE PARTIES ARE GIVING UP THEIR CONSTITUTIONAL RIGHTS TO HAVE ANY SUCH DISPUTES DECIDED IN A COURT OF LAW BEFORE A JURY, AND INSTEAD ARE ACCEPTING THE USE OF ARBITRATION. ACCORDINGLY, DAMON ABNOS ("CLIENT") IS ADVISED TO OBTAIN THE ADVICE OF INDEPENDENT COUNSEL BEFORE ENTERING INTO THIS AGREEMENT.

ANY ARBITRATION PROCEEDING UNDER THIS AGREEMENT SHALL BE CONDUCTED IN SAN DIEGO, CALIFORNIA. SUCH PROCEEDING SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") UNDER THE AAA's COMMERCIAL ARBITRATION RULES AND MEDIATION PROCEDURES; AND, IF APPLICABLE, UNDER THE AAA's SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES ("CONSUMER RULES") AND CONSUMER DUE PROCESS PROTOCOL ("PROTOCOL"). THE CLIENT AND THE LAW FIRM SHALL CAUSE A SINGLE ARBITRATOR TO BE SELECTED AND SHALL SHARE EQUALLY THE ARBITRATOR'S FEES AND THE AAA's ADMINISTRATIVE FEES; EXCEPT, WHERE THE CONSUMER RULES AND THE PROTOCOL APPLY, THEY SHALL BE FOLLOWED WITH RESPECT TO SUCH FEES. THE ARBITRATOR'S DECISION SHALL BE CONCLUSIVE, FINAL AND BINDING UPON THE PARTIES.

THE LAWS OF THE STATE OF CALIFORNIA PERTAINING TO BINDING ARBITRATION ALSO SHALL APPLY, AND JUDGMENT ON THE ARBITRATOR'S DECISION MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION. NEITHER PARTY MAY SEEK AN APPEAL OR

REVIEW OF THE ARBITRATOR'S DECISION EXCEPT UPON THE GROUNDS SPECIFIED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1285 AND FOLLOWING.

THE LAW FIRM:

SELTZER CAPLAN McMAHON VITEK
A Law Corporation

Dated: November 19, 2003

By: [signature]
LEE E. HEJMANOWSKI
Title: Vice President

THE CLIENT:

Dated: 11-27-03

[signature]
DAMON ABNOS

EXHIBIT 18

COPY

FILED
CIVIL BUSINESS OFFICE 7
CENTRAL DIVISION

08 JAN 17 PM 2:06

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

Christopher L. Ludmer, Esq. (SBN 208411)
SELTZER CAPLAN McMAHON VITEK
A Law Corporation
750 B Street, 2100 Symphony Towers
San Diego, California 92101-8177
Telephone: (619) 685-3003
Facsimile: (619) 685-3100

Attorneys for Defendant LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK and Cross-Complainant SELTZER CAPLAN McMAHON VITEK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
(CENTRAL DIVISION)

DAMON ABNOS, an individual, Plaintiff, vs. LEE HEJMANOWSKI, an individual; SELTZER CAPLAN McMAHON VITEK, a Law Corporation; and DOES 1 to 10, Defendants. AND RELATED CROSS-ACTION	CASE NO. GIC 864098 **NOTICE OF PETITION AND PETITION TO CONFIRM ARBITRATION AWARD** Judge: Hon. William R. Nevitt, Jr. Date: February 29, 2008 Time: 1:30 p.m. Dept.: 64

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 29, 2008, at 1:30 p.m., or as soon thereafter as this matter can be heard, in Department 64 of the above-entitled court, Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK, and Cross-Complainant SELZTER CAPLAN McMAHON VITEK, will and hereby do petition to confirm the arbitration award dated December 26, 2007, by the Hon. Anita Rae Shapiro (Ret.).

The petition will be based upon this notice and petition (previously filed January 8, 2008); the arbitration award dated December 26, 2007; the arbitration agreement between the parties dated

November 23, 2003; the stipulation of the parties for binding arbitration dated November 16, 2006; the pleadings, records and files in this action; and such further oral argument and documentary evidence and argument may be presented at or before the hearing.

Dated: January 17, 2008

SELTZER CAPLAN MCMAHON VITEK
A Law Corporation

By: ______________________
Christopher L. Ludmer
ATTORNEYS FOR Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK

COPY

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CIVIL BUSINESS OFFICE 7
CENTRAL DIVISION

08 JAN 17 PM 2:06

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

Christopher L. Ludmer, Esq. (SBN 208411)
SELTZER CAPLAN MCMAHON VITEK
A Law Corporation
750 B Street, 2100 Symphony Towers
San Diego, California 92101-8177
Telephone: (619) 685-3003
Facsimile: (619) 685-3100

Attorneys for Defendants LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK and Cross-Complainant SELTZER CAPLAN McMAHON VITEK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
(CENTRAL DIVISION)

DAMON ABNOS. Plaintiff, vs. LEE HEJMANOWSKI, ET AL. Defendants. AND RELATED CROSS-ACTION	CASE NO. GIC 864098 **PROOF OF PERSONAL SERVICE**

(1) I am over 18 years of age and not a party to this action.

(2) I served the following documents:

NOTICE OF PETITION AND PETITION TO CONFIRM ARBITRATION AWARD; PETITION TO CONFIRM ARBITRATION AWARD

(3) I caused such documents to be delivered by hand to the office of the addressee by Knox Attorney Service

(a) Name: Joseph G. Maiorano, Esq.

(b) Address: 402 West Broadway, 27th Floor, San Diego, California 92101

///

(4) I am employed in the County of San Diego, State of California. My business address is 750 B Street, Suite 2100, San Diego, California 92101.

(5) I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Dated: January 17, 2008

Terri A. Zendejas

EXHIBIT 19

NORMAN T. SELTZER
ROBERT CAPLAN
GERALD L. MCMAHON
REGINALD A. VITEK
DAVID J. DORNE
JAMES R. DAWE
BRIAN T. SELTZER
ELIZABETH A. SMITH-CHAVEZ
JOYCE A. MCCOY
DENNIS J. WICKHAM
JOHN H. ALSPAUGH
JAMES P. DELPHEY
ELINOR T. MERIDETH
MICHAEL G. NARDI
THOMAS F. STEINKE
NEAL P. PANISH
SEAN T. HARGADEN
DAVID J. ZUBKOFF
CHARLES L. GOLDBERG
PATRICK Q. HALL
MICHAEL A. LEONE
DANIEL A. ANDRIST
J. SCOTT SCHEPER
LEE E. HEJMANOWSKI
DANIEL E. EATON
MONTY A. McINTYRE
GREGORY A. VEGA
HOWARD J. BARNHORST II
PAUL R. DATNOW
JACK R. LEER
AMANDA L. HARRIS
MARNIE S. SKEEN
DAVID M. GREELEY
CHARLES B. WITHAM
RHONDA K. CRANDALL
SCOTT A. MILLER
ROBERT (ROBIN) M. TRAYLOR
LINDA PAPST de LEON
JOSEPH P. MARTINEZ
RICHARD A. CLEGG
G. SCOTT WILLIAMS
JEFFREY B. HARRIS
ANDREW D. BROOKS
MATTHEW M. MAHONEY
CHRISTINE M. LA PINTA
DANIEL W. ABBOTT
ANGELA A. WOOLARD
ALLISON C. SHANAHAN
ERIK L. SCHRANER
JASON P. SWEENEY
JASON M. SANTANA
CLARICE A. ESTRADA
CHRISTOPHER L. LUDMER
NICHOLAS S. BARNHORST
CHAD M. HARRIS
CYNTHIA MORGAN
MICHAEL B. LEES
JUSTINE M. PHILLIPS
HOPE N. CHAU
J. KEVIN MANN[1]
TRACY A. WARREN
KEVIN O. MOON
KIRSTEN Y. ZITTLAU
RACHEL M. SCATIZZI[2]
TODD E. HYATT
MATTHEW D. SELTZER
EDWARD J. O'CONNOR
JESSIKA K. JOHNSON
KATHRYN B. QUARLES

OF COUNSEL
M. CHRISTINE TENNISON

[1]ADMITTED IN TEXAS ONLY
[2]ADMITTED IN MISSOURI & ILLINOIS ONLY

www.scmv.com
619.685.3003
619.685.3100 FAX

2100 SYMPHONY TOWERS
750 B STREET
SAN DIEGO, CALIFORNIA 92101

SELTZER | CAPLAN | McMAHON | VITEK
A LAW CORPORATION

CHRISTOPHER L. LUDMER, ESQ.
ludmer@scmv.com
619.685.3122
619.702.6895 FAX

January 18, 2008

VIA HAND DELIVERY AND FACSIMILE

Joseph G. Maiorano, Esq.
The Law Offices of Joseph Guy Maiorano
Emerald Plaza
402 West Broadway, 27th Floor
San Diego, California 92101

Re: **Damon Abnos v. Lee Hejmanowski, et al.**
San Diego Superior Court Case No. GIC864098
Our File No.: 05000.60424

Dear Mr. Maiorano:

On January 14, 2008, this firm received a "Petition to Vacate Arbitration Award; Memorandum of Points and Authorities in Support Hereof" that you filed on January 10, 2008 in the United States District Court, Southern District of California, assigned Case Number 08 CV 0058 DMS WMc ("federal petition"). That federal petition is factually groundless and legally frivolous, and it appears to be nothing more than an attempt to harass my clients and double the cost of enforcing the arbitration award by forcing us to proceed on the same matter in two courts simultaneously. As you know, on January 8, 2008, Seltzer Caplan McMahon Vitek ("SCMV") filed a Petition to Confirm Arbitration Award in San Diego Superior Court, Department 64, Case Number GIC864098 ("state petition"). A hearing on that state petition is currently scheduled for February 29, 2008, at 1:30 p.m. before Judge Nevitt in Department 64.

The purpose of this letter is to meet and confer with you, and to formally request and demand that you immediately withdraw and dismiss your federal petition for the following reasons:

1. Your client, Plaintiff in the underlying state court action, selected the San Diego Superior Court as the forum for this dispute when he initiated proceedings by filing the complaint in case number GIC86098. When you made an appearance as counsel of record for Mr. Abnos, you continued to pursue the case in state court. You

will recall that despite SCMV's demands and the plain language of the contractual arbitration agreement between the parties, you refused to agree to submit the matter to binding arbitration until *after* SCMV was forced to file a Motion to Compel Arbitration in Superior Court. Then, on November 16, 2006, Judge Nevitt approved the parties' written stipulation for binding arbitration and entered an appropriate order. The state court specifically retained jurisdiction to confirm, vacate, or correct any arbitration award. SCMV's Petition to Confirm Arbitration Award is already pending in that state court proceeding, and a hearing date has been set. If you believe that you and your client have a reasonable basis to challenge that award under the available and very limited statutory grounds, the appropriate way to do so is by opposing SCMV's state petition in San Diego Superior Court.

2. The arbitration agreement signed by Mr. Abnos provides that, "the laws of the State of California pertaining to binding arbitration also shall apply….Neither party shall seek an appeal or review of the arbitrator's decision ***except upon the grounds specified in California Code of Civil procedure Sections 1285 and following***" (emphasis added). Thus, the arbitration agreement clearly displaces the Federal Arbitration Act ("FAA"). Under well-established United States Supreme Court precedent, nothing in the FAA prevents enforcement of agreements to arbitrate under different rules. Just as the parties may limit by contract the issues to be arbitrated, "so too may they specify by contract the rules under which that arbitration will be conducted." (*Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Jr. Univ.* (1989) 489 U.S. 468, 469.) The basic objective is to ensure that commercial arbitration agreements, like other contracts, are enforced according to their terms. (*First Options of Chicago v. Kaplan* (1995) 514 U.S. 938, 946.) Moreover, the case law is clear that parties intend to displace the federal standard for vacatur where, as here, they agree to more than just a generic choice of law clause. (*Jacada (Europe), Ltd. v. International Marketing Strategies, Inc.* (6th Cir. 2005) 401 F.3d 701, 710–712; *Sovak v. Chugai Pharmaceutical Co.* (9th Cir. 2002) 280 F.3d 1266, 1269.) Accordingly, your attempt to vacate the arbitration award in federal court under the FAA rather than in state court "upon the grounds specified in California Code of Civil procedure Sections 1285", is legally frivolous because it directly contravenes the clear terms of the arbitration agreement which displace the FAA.

3. Your federal petition is also frivolous and in violation of the arbitration agreement because by limiting the arbitration and any

appeal or review of the arbitrator's decision to California law and to the California Code of Civil Procedure, the agreement made venue in any court other than the state court proceeding improper. Specifically, California Code of Civil Procedure section 1292.6 states: "After a petition [to confirm or vacate an arbitration award] has been filed under this title, the court in which such petition was filed retains jurisdiction to determine any subsequent petition involving the same agreement to arbitrate and the same controversy, ***and any such subsequent petition shall be filed in the same proceeding***" (emphasis added). SCMV filed its petition to confirm the arbitration award first in state court, Department 64, on January 8, 2008. Thus, any subsequent petition by Mr. Abnos had to be filed in the *same proceeding*, not in federal court. Your federal petition thus violates California Code of Civil Procedure section 1292.6. Moreover, the Ninth Circuit has held that a forum selection clause and/or choice of law affecting forum clause is a ground for a 12(b)(3) motion to dismiss for improper venue. (*Argueta v. Banco Mexicano, S.A.* (9th Cir. 1996) 87 F.3d 320, 324.)

4. Your federal petition is also improper because it frivolously joins Mr. Lee Hejmanowski individually as a defendant. As you know, Mr. Hejmanowski was not a party to the arbitration. Rather, the only parties to the actual arbitration were SCMV and Mr. Abnos. Not only did you confirm this at the arbitration, but the arbitrator's award attached to your own federal petition does not name Mr. Hejmanowski as a party. Under well-established Ninth Circuit precedent, improper or unwarranted naming of parties may be sanctioned. In other words, even if a pleading states a meritorious claim against one defendant—yours does not—it does not justify adding others against whom the claim is frivolous. (*Townsend v. Holman Consulting Corp.* (9th Cir. 1990) 914 F.2d 1136, 1141.)

5. Part of the relief sought by your federal petition is also frivolous. In your petition, you ask the District Court to "have the entire award vacated and to have the matter arbitrated de novo or litigated in the District Court." (Federal petition, p.1, ll. 16-17.) It is patently frivolous to ask the District Court, or any court, to litigate the matter. First, the matter has already been arbitrated. Second, as you know, not only did the parties agree to arbitration by contract, but Judge Nevitt, pursuant to the parties' stipulation, *ordered* binding arbitration. Your request to have the matter litigated in federal court is in contravention, and perhaps contempt, of a state court order.

6. Your factually groundless federal petition is not supported by the record or the authority cited and fails to acknowledge the broad discretion conferred to resolve controversies in arbitration. Moreover, your federal petition misuses the very limited statutory bases for vacating an arbitration award. The United States Supreme Court made clear that, "because the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept. Courts thus do not sit to hear claims of factual or legal error by an arbitrator." (*United Paperworkers International Union, AFL-CIO, et al. v. Misco, Inc.* (1987) 484 U.S. 29, 38.) Despite the unambiguous case law, the first 9 pages of your 12-page federal petition do nothing more than reiterate your client's version of the facts and argue that the arbitrator should have agreed with that version. Moreover, your alleged "legal" bases for vacating the award are nothing more than restatements of Mr. Abnos' position on the facts and the law—i.e., because the arbitrator was, in Mr. Abnos' opinion, wrong on the facts and the law, she must have been partial, must have exceeded her authority, must have disregarded the law, and had to have been "completely irrational." This exact type of self-serving contention has been held to lack any merit by the Ninth Circuit. (*Rostad & Rostad Corp. v. Investment Mgt. & Research, Inc.* (9th Cir. 1991) 923 F.2d 694, 697.) Indeed, in *Rostad*, the appellate court held that a motion to vacate an arbitration award, like Mr. Abnos', was "wholly improper" because it ignored the court's limited power to review such awards. The court awarded sanctions in the form of attorney's fees and double costs. (*Id.*; *see also Cuna Mut. Ins. Soc. v. Office & Professional Employees Int'l Union, Local 39* (7th Cir. 2006) 443 F.3d 556, 561-562.)

Your federal petition is improper for other reasons as well. Again, SCMV requests and demands that you immediately withdraw and dismiss your federal petition and proceed in the proper forum on the proper bases: Department 64 of the San Diego County Superior Court, under the California Code of Civil Procedure. SCMV believes that you and Mr. Abnos are improperly resisting an arbitrators' award which Mr. Abnos' own contract made possible. Also, you and Mr. Abnos have failed to understand the very limited review now available only in the San Diego County Superior Court. Your federal petition violates California law, ignores binding precedent, invokes a clearly inapplicable federal statute (FAA), presents meritless opposition, and improperly joins a defendant who was not even party to the arbitration. Moreover, by improperly forcing SCMV to seek to confirm the arbitration award in both state and federal courts simultaneously and on improper bases, your federal petition unreasonably and vexatiously multiplies the proceedings.

Under both federal and California law, and the courts' inherent powers, sanctions may be imposed for improper petitions to vacate an arbitration award. (*See* Rule 11, Federal Rules of Civil Procedure; *Rostad & Rostad Corp. v. Investment Mgt. & Research, Inc.* (9th Cir. 1991) 923 F.2d 694, 697; California Code of Civil Procedure section 1286.2(b) [California Code of Civil Procedure section 128.7 applies to petitions to vacate an arbitration award].) This letter serves both as SCMV's attempt to meet and confer in good faith before filing any motions to dismiss, motion to strike, or sanctions motions, and SCMV's attempt to mitigate its damages and prevent the time and expense of filing such motions, as well as the time and expense of having to prepare and argue any substantive opposition to your federal petition.

Should you fail to withdraw and dismiss the pending federal petition and the federal action by January 23, 2008, SCMV will be forced to serve you with a Rule 11, Federal Rules of Civil Procedure, motion, and will be forced to prepare appropriate motions to dismiss, and to strike. In that event, SCMV will move in both federal and state court for all available sanctions against both you and your client. We are reluctant to do so, and so hope you appropriately withdraw your federal petition by January 23 and proceed in the proper manner in the on-going state proceeding.

If you have any questions, please do not hesitate to call me at (619) 685-3122.

Very truly yours,

Christopher L. Ludmer, Esq.
SELTZER CAPLAN McMAHON VITEK
A Law Corporation

CLL/taz

www.scmv.com
619.685.3003
619.685.3100 FAX

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750 B STREET
SAN DIEGO, CALIFORNIA 92101

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FAX COVER SHEET

TO: Joseph G. Maiorano, Esq.

FAX NUMBER: (619) 230-1839

TELEPHONE NUMBER: (619) 230-1612

FROM: Christopher L. Ludmer, Esq.

DATE: January 18, 2008

DOCUMENT TRANSMITTED: Letter dated January 18, 2008

OUR FILE NUMBER: 05000.60424 ORIGINAL: [**X**] WILL BE MAILED [] WILL NOT BE MAILED

OUR CASE NAME: **Damon Abnos v. Lee Hejmanowski, et al.**

ADDITIONAL COMMENTS:

CONFIRMATION NUMBER: (619) 685-3122

TOTAL NUMBER OF PAGES IN THIS TRANSMISSION: 6 (including cover sheet)

If you are not receiving properly or have not received all pages, please phone us immediately at: (619) 685-3003. Thank you.

Fax Operator for SCMV: Terri A. Zendejas, Secretary to Christopher L. Ludmer

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TO: Joseph G. Maiorano, Esq.

FAX NUMBER: (619) 230-1839

TELEPHONE NUMBER: (619) 230-1612

FROM: Christopher L. Ludmer, Esq.

DATE: January 18, 2008

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